STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-701

October 23, 2001

PUBLIC UTILITIES COMMISSON
Construction Standards and Ownership
and Cost Allocation Rules for Electric
Distribution Line Extensions (Chapter 395)

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT, DIAMOND Commissioners

I. INTRODUCTION

This Rule establishes the requirements for persons who construct electric distribution line extensions (line extensions), including the development and approval of standards, qualifications to perform tasks associated with building line extensions, and dispute resolution procedures. It applies both to transmission and distribution (T&D) utilities and competitive providers of line extensions, and it establishes parameters that are necessary to create a level playing field for the T&D utilities and their competitors with respect to the construction of line extensions, to the extent consistent with public safety. In addition, it governs the ownership of line extensions and the procedure for apportioning and reapportioning construction costs among customers who receive service from a line extension.

II. BACKGROUND

During its first session, the 120th Legislature enacted legislation[1] that addresses issues related to line extensions constructed by persons who are not employed by transmission and distribution (T&D) utilities, referred to as private line extension contractors in this Notice.[2] The law requires the Maine Public Utilities Commission (Commission) to develop a rule that:

- Establishes standards for line extension construction that are identical for utility employees and private line extension contractors unless there are compelling safety reasons to do otherwise;

[1] An Act Concerning Private Line Extensions, P.L. 2001, Ch. 201 codified as 35-A M.R.S.A. § 314. The text of the act is contained in Appendix A.

[2] For purposes of this Notice, a person with whom a T&D utility contracts to build a line extension that will be owned by the T&D utility is *not* a private line extension contractor.

- Establishes terms for transferring ownership of a line extension from a private owner[3] to a T&D utility; and

- Establishes methods for apportioning the costs of a line extension among persons who receive service through the line.

In addition, the law requires the Commission to examine whether minimum qualifications should be established for private line extension contractors. The law requires the Commission to submit the proposed Rule and its recommendations regarding minimum qualifications to the Utilities and Energy Committee no later than February 1, 2002.

III. THE INQUIRY PROCEEDING

We have conducted an Inquiry to obtain information to help us develop this proposed Rule. We solicited written comments by issuing a Notice of Inquiry on July 31, 2001 in Docket No. 2001-461. We received written comments from Bangor Hydro-Electric Company (BHE), Central Maine Power Company (CMP), Electrical Design Consultants, Houlton Water Company, the Maine Board of Registration for Professional Engineers (BRPE), the Maine Department of Transportation (MDOT), the Maine Powerline Construction Association (MPCA), Maine Public Service Company (MPS), Adrian Marden, Office of the Public Advocate (OPA), Perkins Engineering, Brenda Piambiano, and Verizon Maine. In addition, we worked with the MPCA and CMP to develop procedures for resolving disputes as they arise between private line extension contractors and CMP regarding line extension construction procedures. This procedure has been used in recent months and its effectiveness has been helpful in developing the proposed Rule. Finally, we conferred with the Maine Office of Licensing and Registration [4] to determine whether licensing private line extension contractors under their auspices is possible or likely.

IV. GENERAL PRINCIPLES

In considering a statewide Rule, we recognize that each T&D utility in the State currently has its own approved tariffs governing line extension payment and ownership requirements, and each has its own construction standards. Thus, the implementation of a Rule may require some T&D utilities to change their line extension policies or their construction standards. The law allows the Commission to approve different standards for different utilities.

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[3] For purposes of this Notice, "private owner" refers to a person who is not a T&D utility and who owns an electric distribution line extension.

[4] The Maine Office of Licensing and Registration is the State agency with jurisdiction over licensing of electricians (through the Electrician's Examining Board) and professional engineers (through the Maine Board of Registration for Professional Engineers).

We also recognize that private line extension contractors presently operate only in BHE and CMP service areas.[5] We believe that this pattern has developed because a customer that requires a line extension in those utilities' service areas must pay the T&D utility its full cost to build the line extension. Most other utilities do not charge full cost for all line extensions. For example, MPS builds the first 300 feet per customer without charge. Kennebunk Light and Power District charges full construction cost to the customer(s) ordering a line extension, but allows the customers to pay for it over five years without carrying costs. Because of the greater customer payment responsibility in CMP and BHE territories, private line extension contractors are often able to build a line at a lower price to the customer. Thus, as a practical matter, the portions of this Rule that apply to private contractors (and the relationship between private contractors and T&D utilities) will not apply to many utilities unless they revise their line extension policies to require customers to pay the full cost of line extension construction.

In the proposed Rule, we follow three general principles. First, competition for line extension construction may benefit customers by lowering costs. Second, each business entity should compete based on its economic merits. Thus, our proposed Rule strives to eliminate barriers to competition and avoid subsidies. It also will require that all entities attain identical levels of safety and reliability. Third, line extensions must be safe, regardless of who constructs or owns them.

V. DISCUSSION OF INDIVIDUAL SECTIONS

A. Section 1: Definitions

Section 1 defines terms used in the proposed Rule. The definitions distinguish between a T&D utility that builds a line extension and a person who builds a line extension but is not employed by a T&D utility ("private line extension contractor"). The definitions also distinguish between a line extension that is built by a T&D utility and a line extension that is built by a private line extension contractor ("privately constructed line extension"). Finally, the definitions distinguish between a line extension that is owned by a T&D utility and one that is owned by a non-utility person ("privately owned line extension").

B. Section 2: Purpose

Consistent with the general principles, Section 2 states that the purposes of the Rule are to ensure construction of safe and reliable line extensions, to allow economically efficient competition, and to allocate construction costs equitably and efficiently among customers. As required by law, the purpose also includes governance of line extension ownership.

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[5] Private line extension contractors also operate on a limited basis in Swans Island territory.

The proposed Rule primarily addresses the line extension policy issues identified in the statute that requires this rulemaking. 35-A M.R.S.A. § 314. These issues primarily relate to private construction and ownership of electric line extensions and the allocation of the costs of those lines among the customers who use them. There are, however, additional policy issues that are not covered in the law or proposed Rule, that nonetheless significantly influence the costs that line extension construction imposes on customers, utilities, and utility ratepayers. The most important of these issues are: the portion of the cost of a utility-built line extension that the new customers must pay (i.e., the relative cost burden between line extension customers and the utility's general body of ratepayers); the extent to which a customer may pay for his or her line extension over time; whether we should require low-income assistance programs and the terms of any such programs; and consistency between electricity and telephone line extension policies. Currently, these additional policies are addressed in each utility's Terms and Conditions and often differ among utilities. We envision that in the future, that we may expand the Rule to encompass all line extension policy issues for both electric and telephone utilities. Persons may comment on whether such a future rulemaking would be worthwhile.

C. Section 3: Standards for Construction of Line Extensions

Pursuant to federal and state law, each T&D utility in the State currently builds its line extensions to comply with the National Electric Safety Code (NESC) standards and, in some instances, with the Rural Utilities Service (RUS) standards. In addition, each utility maintains its own internal construction standards (referred to as "utility construction standards" or "utility standards" in this Notice). Collectively, the NESC (or RUS) and the utility's own utility construction standards constitute the "standards" addressed by this section of the Rule.

Utility construction standards clarify the methods for implementing the NESC and the RUS and specify facilities or equipment that are compatible with the utility's distribution system. Occasionally, utility standards are more stringent than the NESC and the RUS standards because of geographic and weather conditions in Maine. While Commission staff currently review and comment on utilities' construction standards (when the standards are written), the Commission does not currently approve the standards.

Access to utilities' standards and the cost of that access have been a source of conflict between private contractors and T&D utilities. We addressed these issues in our Inquiry. Only some T&D utilities maintain their standards in writing, and, in some cases, it apparently has been difficult to obtain them. We have also addressed allegedly inconsistent interpretations of utilities' standards by utility employees. Such inconsistency has made it difficult for private line extension contractors to be certain that lines they construct will be acceptable to the T&D utility. Finally, some private line extension contractors have complained that T&D utilities have demanded more stringent and costly standards for contractors than are required for the utility.

In the proposed Rule, we strive to attain consistency in the operation of all standards within a T&D utility's territory and to ensure accessibility at a reasonable cost.

Section 3(A) establishes that all line extensions must be constructed in compliance with the NESC, the RUS if applicable, and the T&D utility's construction standards. The provision contributes to consistency in the requirements for all competitors and ensures that all line extensions attain an adequate level of safety.

Section 3(B) establishes the method by which the Commission will review and approve utilities' construction standards. Sections 3(B)(1) and (2) require that initial and revised utility construction standards must be filed with the Commission as part of the T&D utility's Terms and Conditions and must be approved pursuant to the same procedure as for all Terms and Conditions. This procedure is well established by law (35-A M.R.S.A. § 307). Pursuant to this Rule, we will solicit comments from interested persons, if we deem this to be advisable, before approving the standards.

Section 3 does not specifically authorize (or expressly prohibit) different utility construction standards for utility-built and privately built line extensions. Generally, we expect that we will require utilities to maintain identical requirements for all persons that build line extensions. There may be safety reasons to impose additional or more stringent standards for private line extension contractors, but we will not do so without compelling evidence that the difference is necessary to maintain public safety. We also recognize that some utilities impose standards that are more stringent than those of the NESC or the RUS, and that some private line extension contractors have argued that the less stringent national standards, if applied to privately-built line extensions, would provide adequate safety and be less costly. Again, absent compelling evidence, we are not likely to allow the use of standards that provide a lesser degree of safety than the utility requires for its own construction. If there is a reason that some utility standards should be more stringent than NESC or RUS standards, then that reason is likely to apply to all line extensions.

We note in this connection that we do not consider a requirement that a cutout separate a privately-owned line from a utility line to be a "higher" standard for a privately-built or privately-owned line. Rather, it is simply a reasonable requirement for the interface between a utility-owned and privately-owned line. It is justified by the fact that private owners are responsible for the maintenance of privately-owned lines and if they do not perform that obligation adequately, there could be adverse effects for the utility distribution system.

Section 3(B)(3) requires that a T&D utility obtain input about its initial standards and proposed revisions from interested persons before submitting to the standards. We expect this provision to lessen the likelihood of disputes over the validity of the standards and it to speed the approval process. For this purpose, we expect the T&D utility to contact the private line extension contractors that commonly operate in its service territory and those registered professional engineers (PEs) that privately design or inspect private line extensions.

Section 3(B)(4) allows any person to suggest revisions to a T&D utility's standards and sets forth the procedure by which the Commission would consider the suggestion. Under 35-A M.R.S.A. § 1303, the Commission may investigate "any matter relating to a public utility." Although the Commission has discretion to deny a request for an investigation, this provision provides an avenue for private line extension contractors and others to request the Commission to address standards that they consider inappropriate or inequitable.

Section 3(B)(5) allows a T&D utility or a non-utility person to suggest modifications or waivers to the NESC, as permitted by Maine law, 35-A M.R.S.A. § 2305-A. While we have referred to this procedure in the Rule because it is included in the statute, we would require very substantial evidence that the modification or waiver was necessary and would result in adequate public safety before granting such a request. We believe that we would grant such requests only in unusual circumstances.

Section 3(C) describes the approval procedure for changes to the NESC, and approval to a utility's initial line construction standards and revisions to those standards. Section 3(C)(3) states that, until a utility's standards are initially approved as utility Terms and Conditions, all persons must comply with currently existing utility standards that are not part of the utility's Terms and Conditions. During this transition period, standards must be identical for utility employees and for private line extension contractors.

Section 3(D) requires each T&D utility to maintain its standards in writing and make those written standards available to the public. The utility must put the standards on its web site, if it maintains a site, and must provide a paper copy for a fee commensurate with the cost of copying. In the Inquiry, some utilities expressed the concern that making the standards available to the public would encourage inexperienced persons to build a line extension. We do not share that concern. The ultimate safeguard is contained in section 8 of the proposed Rule, which prohibits energizing substandard lines. In addition, the risk can be reduced if utility standards and web sites clearly state the provisions that limit private line construction to qualified individuals.

D. Section 4: Line Extension Construction; Constructor Qualifications

A central issue in this rulemaking involves the qualifications that should be required of persons involved in each stage of the line construction process. There are three distinct stages – initial design, construction, and the final certification that the line complies with standards before it can be energized. Currently, pursuant to the Terms and Conditions of Central Maine Power Company and Bangor Hydro-Electric Company, a utility employee or a registered PE must design and certify the line extension. However, there are no minimum qualifications required of persons that build (as opposed to design or certify) the line extension. The status quo has been criticized in three ways.

First, private line extension contractors have claimed that not many PEs are willing to undertake design and certification work, and that retaining the services of a PE for design and certification is often costly and delays construction. Some contractors suggest that a PE is not necessary for the design and certification of line extensions – particularly of single-phase and secondary voltage line extensions. On the other hand, some engineers state that these functions fall within the definition of professional engineering in Maine law.

Second, a concern has arisen regarding the lack of any requirements governing who may build (as opposed to design or certify) a line extension. Maine law requires that a person be registered with the Board of Registration for Professional Engineers (BRPE) before carrying out professional engineering functions (32 M.R.S.A. § 1351) or have a permit from the Electrician's Examining Board (EEB) before installing electrical equipment. 32 M.R.S.A. § 1102-B. The extent to which current EEB permitting categories include private line extension construction is unclear. However, the EEB does not currently issue permits for private line extension construction. The State of Maine Office of Licensing and Registration (OLR) has indicated that it could investigate expanding or clarifying its licensing categories to include any or all of the functions required to build line extensions. This investigation is not yet complete.

Expansion of the OLR's license categories could address the two concerns discussed above. First, a license could be created that allows a person to build (not design or certify) line extensions. We understand that a licensing requirement could be created by expanding the existing master electrician's license. Such a license would allay concerns that there is no prohibition against unqualified persons building line extensions. Second, with OLR, we intend to investigate whether a license could be created that allows a person who is building line extensions to design and certify those extensions without obtaining a registered PE license. This license would encompass only the engineering skills that are required for line extension construction. Such a license would eliminate the cost and delay that currently may result from the need to retain PE services. While such licensing is beyond the Commission's authority to develop, we understand that the OLR will address the licensing issues described in P.L. 2001, ch. 201, § 2 before the February 1 deadline set forth in the law. We invite interested persons to comment on the legal and practical possibility of licensing each of the three functions through the OLR.

In Section 4 of the proposed Rule, we incorporate the possibility of a State license for each of the three construction functions. If such licenses are not developed, the Rule retains qualifications that are similar to those in effect currently, but adds the requirement that a PE oversee the construction function. Such oversight is not explicitly required by current Terms and Conditions. However, as a practical matter, such PE oversight currently is (or should be) carried out by the PE that will certify the line extension, to the extent the PE determines that oversight is necessary to inform him or her that the line is being built in compliance with the applicable standards.

Section 4(A) states that the design must be approved – not necessarily performed – by a PE, a person licensed for electric line extension design by the State, or a T&D employee. Section 4(B) states that any person may perform construction if the construction is overseen by a PE, a person licensed for electric line construction by the State, or a T&D employee. Section 4(C) states that a PE, a person licensed for line extension construction by the State, or a utility employee may perform final certification. For all three functions, if a utility employee performs the function, the employee must be one designated by the utility.

Finally, issues have sometimes arisen over whether private contractors may construct line extensions in public ways. For the most part, this is a matter that is addressed by the state Department of Transportation (DOT), counties or municipalities because they must decide whether to issue a license to a "person other than a transmission and distribution utility" to construct electric line facilities in a public way under the provisions of 35-A M.R.S.A. §§ 2305 and 2503. We are not aware that if the Terms and Conditions of any utility presently prohibit or restrict private contractors from constructing line extensions in the public way, but if any do so, they would conflict with section 2305, which does allow such construction if the person obtains a permit from the licensing authority and meets the other requirements of the statute. Proposed section 4(B) therefore makes clear that private contractors may build anywhere, but they must obtain all required approvals to build in the public way.[6]

E. Section 5: Dispute Resolution

Our inquiry revealed that most complaints regarding inappropriate or inconsistent implementation of standards can be resolved when a private line extension contractor and the central management of the T&D utility communicate directly. During the inquiry stage, such meetings occurred in CMP's territory, and the persons involved resolved many disagreements over standards and their implementation. We believe this approach would be equally effective in other utilities' territories. The proposed Rule therefore sets forth a procedure whereby a consistent group of individuals communicates about the standards and their implementation.

Section 5(A) requires that both private line extension contractors and T&D utilities maintain a single point of contact for resolving disputes regarding the application of standards. Section 5(B) allows either a T&D utility or a private line extension contractor to raise concerns regarding the application of standards and requires that the T&D utility and the private line extension contractor attempt to resolve a dispute before involving a State agency. This procedure would apply to whether a standard applies to

[6] The authorities with responsibility for public ways have discretion to impose conditions on their issuance of permits. The Maine Department of Transportation (DOT) presently restricts line extension construction in state highways to T&D utilities. In addition to Chapters 23 and 25 of Title 35-A, Title 23 of the Maine statutes governs many aspects of building on state owned highways, county owned roads, and municipally owned roads.

a given situation or to an on-site disagreement over actions being taken on an individual line extension. If the dispute cannot be resolved in this manner, Section 5(C) allows the dispute to be brought to the Commission. The Commission would either refer the dispute to the OLR if appropriate or would resolve the dispute itself. The Commission would first attempt to resolve the dispute through our well-established Consumer Assistance Division informal dispute process. If this method did not end the matter, we would conduct an investigation under existing procedures.

F. Section 6: Ownership

Discussions leading up to the Inquiry stage of our rulemaking considered the situations in which the T&D utility must own or maintain a line extension to ensure adequate public safety. In resolving the question in this proposed Rule, we observe two general principles. First, if the availability or safety of a line affects the public at large, such as when a line runs along a public highway, the owner must be reachable immediately to repair or maintain that line. We conclude that only the T&D utility should be the owner in these situations. Second, we believe that sound public policy should not permit private (non-utility) ownership of lines when a line serves more than one customer. Safety may well be jeopardized if responsibility for maintenance of the line is split, and numerous situations have occurred in which the legal right of subsequent customers to obtain access to such lines has been unclear or inadequate. Requiring the transfer of a privately-owned line to the utility (along with necessary easements) when the line begins to serve another customer also tends to discourage the building of duplicate facilities, which increase cost and are visually undesirable. As a general matter, it is desirable that new customers obtain electric service from existing T&D facilities that are near their property to the greatest extent possible. We note, however, that the interest in promoting access to existing facilities must be balanced against legitimate private property rights. We discuss these issues in detail below in our discussion of section 6(A)(4).

In addition to considering these principles concerning the ownership of lines, a distinction must be made between who *builds* the line and who *owns* the line. In section 4(B) of the proposed Rule, we made it clear that any qualified entity may build a line extension, regardless of where it is located. Thus, section 6 addresses who *owns,* not who *builds,* the line. Currently, when a T&D utility builds a line extension, the utility retains ownership of the line extension both while it is being built and after it is built. We see no reason to change this practice. When a private individual causes a private line extension contractor to build a line, the private individual owns the line while it is being built. However, after the line is energized, it may continue to be owned by the private individual or it may be owned by the T&D utility depending on the circumstances described in sections 6 and 7 of the proposed Rule.

Section 6(A) describes the situations in which the T&D utility must own a line extension. Section 6(A)(1) requires that a T&D utility must own any portion of a line extension (including all associated structures or supporting equipment) that is located in a public way (i.e., street or public right-of-way that has been accepted and is owned or

controlled by a town, city, county, state or federal government, as defined in section 1 of the proposed Rule). This requirement is necessary because the owning entity must be immediately available if the line is damaged and is obstructing public activity. Furthermore, public safety requires that lines in a public way be adequately maintained. We are concerned that, despite the maintenance agreement that section 6(B)(3) of the proposed Rule requires from private owners, if we permitted private ownership of facilities in public ways, those owners might be unable or unwilling to perform adequate maintenance, and that enforcement of adequate private maintenance would be difficult. Finally, the MDOT, the county or the municipality must retain a guarantee that the owning entity will move its poles and wires, if necessary, for road construction projects. We are concerned that such a guarantee is practical only if the owning entity is the T&D utility over which a regulatory agency has authority.

Section 6(A)(2) requires that a T&D utility own the structure (usually a pole) that serves as the interconnection point between a privately owned line extension and the T&D system, even if the structure is located outside the public way and is on private property. Utility employees must be able to gain access to poles or other facilities that serve as the interface between the T&D system and a privately-owned line. This provision ensures that poles accessed by utility employees are under the control of those utilities so that they may maintain them at an adequate safety level.

Sections 6(A)(3) should be read together with section 6(B)(2). These provisions govern ownership in a development where a single owner (the developer) causes an initial line extension to be built throughout the development. In this situation, service drops will serve the various customers in the development. Section 6(B)(2) allows the developer to own the line extension until the line is energized.

Section 6(A)(4) requires that a T&D utility own a line extension when more than one customer receives service from the extension. This provision is necessary for two reasons. The first is to ensure that person(s) who do not own the line extension will be served by a safe, reliable delivery system. As we discussed earlier, despite the maintenance agreement required by section 6(B)(3) of the proposed Rule, it may be difficult to enforce adequate maintenance even by single owners. Enforcing such an agreement with multiple owners is likely to be too difficult. Second, ownership by the utility, once a line begins to serve a second customer, better ensures that future customers will have access. The Commission and the Consumer Assistance Division have on many occasions needed to address problems that have developed when a line owned by one person also serves another customer and the right (through easements or otherwise) of the second person to obtain power from the line is unclear. The Rule therefore requires that the owner of a line that serves a single customer must transfer ownership to the utility if the line will serve a second customer and that the second (and any subsequent) customer must obtain any easements (or other property rights) that are necessary to obtain access to the line. Similar requirements are found in some utilities' existing Terms and Conditions.

We emphasize that the Rule does not require the owner of a line that serves only that owner to provide an easement to a second customer if a second customer can only (or can most easily) obtain access across land owned by the owner of the line. Thus, nothing in this proposed Rule requires an owner to agree to allow access (at least across the owner's land) if he or she does not want another customer to be served from the line. However, if the owner of the line does agree that a second customer may be served from the line, and access will be across the owner's land, the owner must not only transfer ownership of any portion of the line extension that will serve both customers, but must also grant an easement to the utility so it has the necessary access to serve the new customer The easement requirement protects the second customer and the utility.

In some cases a second customer is able to gain access to a privately-owned line that serves only the owner of the line without obtaining an easement from the owner of the line. For example, the second potential customer may own land that abuts the line or may have access through an easement granted by a third party. In those cases, the Rule (and contracts that will be required by the Rule) will require the owner to transfer ownership of the line to the utility even though the owner does not agree that a second customer should be served. We consider this requirement as a necessary condition to allowing any private ownership of lines. By requiring this condition, we weigh competing societal and private ownership interests. We find that the public interest is substantial and the private interest is minimal. The public has an interest in preventing the wasteful building of duplicate lines. If a person seeking service from an existing line is able to gain access to the line through property rights granted by persons other than the owner of the line, there is no direct detriment to the land of the line owner.

We also do not consider the ownership transfer requirement (under either of the two circumstances described above) as necessarily detrimental to the line extension owner. Owning a line extension is generally more burdensome than beneficial. If it is privately owned, the owner must maintain the line; if it is owned by the utility, the utility maintains the line, although in some instances the utility charges for that maintenance.[7] The only advantage to a customer that owns a line extensions is that the customer avoids paying the so-called "CIAC tax." Under federal and state income tax law, if a customer makes a "contribution in aid of construction" (CIAC) to an investor-owned utility (IOU) by transferring ownership of the line, the utility must pay federal and state income tax on that contribution. A taxable contribution occurs whether a person contracts with the utility to build the line that the utility will own from the outset or a person builds the line and subsequently transfers ownership to the utility. Under the Terms and Conditions of the IOUs (and of proposed section 7(E)(1) and 7(F)(1) of this

[7] CMP and BHE do not charge for maintenance. MPS charges for maintenance for the portions of line extensions that exceed 2000 feet per customer on a public way and 1000 feet per customer on private property.

Rule) the person making the contribution must pay the utility for most of the tax that the utility pays.[8]

When a line extension is built by the T&D utility, the utility will own the line (even if it is located on private property and will serve only one customer). In that instance, the utility must pay a tax on the CIAC (the payment to the utility for the line), which in turn is charged to the customer. Similarly, when a customer is not permitted to own a line, either because the line is in the public way or it serves more than one customer from the time it is energized, the customer must transfer the line and pay the CIAC tax before obtaining service. It is only in the circumstance that the line is built by a private contractor and the line is owned by the customer and serves only that customer that there is no contribution (transfer of ownership) and no tax.

Requiring a customer in the latter circumstance to transfer the line (and pay the CIAC tax) when a second customer is served places that customers in the same position as that of other customers who had to transfer the line and pay the CIAC tax prior to receiving service, except that they were allowed to delay payment of the tax. In addition, the transfer results in benefits that may partially or wholly offset the burden of having to pay the tax: first, the utility will assume the maintenance obligation and, second, under proposed section 9, the second customer will share in paying both the CIAC tax and some of the original construction costs (if the line is less than ten years old).

We therefore consider the transfer and easement (where the owner consents to a second customer obtaining access over land owned by the owner of the line) requirements as essential conditions of allowing private ownership of line extensions under the limited circumstance permitted by the Rule. When that circumstance ends, the right to own a line also terminates, but the owner of the line is placed in a position that is similar to other customers and that may carry offsetting benefits.

Section 6(B)(1) describes the sole circumstance under which a non-utility person may own an energized line extension. It states that a non-utility person may own a line extension that is on a private way if it serves only one person. Pursuant to section 6(A)(2), an "interconnection point" must be owned by the utility even if it is located on a private way. If the line serves only one customer, inadequate maintenance or slow re-establishment of service is less likely to affect the general public and should be confined to the person with the responsibility for the line extension.

Section 6(B)(2), concerning developments, complements section 6(A)(4), discussed above. It permits a developer to own a line prior to the delivery of service to the first customer.

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[8] The amount is discounted by the present value of the tax depreciation benefits received by the utility.

Section 6(B)(3) sets forth the obligations of a person who owns a line extension. The owner must: maintain and repair the line extension, re-establish interrupted service, and transfer ownership as required by section 7(B) of the proposed Rule. The owner will be required to execute a written contract with the utility that sets forth these obligations. A contract will ensure that the owner is provided with notice of his or her obligation. The section requires the utility to file the contract with the appropriate registry of deeds so that a subsequent purchaser of the line will be informed of his or her obligations.

Section 6(B)(4) requires each utility to use a standard form contract, approved by the Commission, that incorporates the obligations contained in section 6(B)(3). This provision ensures that the contract does not include additional terms that an inexperienced customer is unable to recognize as unnecessary or overly restrictive. We intend to include a standard form contract with the final rule (as an Appendix C) that a utility may use without needing approval. We request that utilities submit proposed form contracts with their comments that we may use for Appendix C.

Section 6(B)(5) allows a T&D utility to connect a new customer to an existing line extension, provided that ownership of the line is transferred to the T&D utility and the new customer has a sufficient property right to gain access to the line, either by owning land on which the line extension is located, owning rights to the private right of way over which the line runs, or through an easement granted by the owner of the line or other land owner that has access to the line. As discussed above in detail, the owner of the line is not required to grant an easement unless he or she agrees that a second person may be served by the line. If the line extension owner agrees, however, (or the second customer can gain access to the line without an easement from the line extension owner), the owner of the line must transfer ownership to the T&D utility.

G. Section 7: Transfer of Ownership; Taxes on Contribution in Aid of Construction

Section 7 establishes the actions that the person who owns a privately owned line extension must take before transferring ownership of the line extension to a T&D utility. A line may be transferred for one of three general reasons: because it is a new line or a facility described in section 6(A) and 7(A) and therefore must be transferred to the T&D utility, because the owner decides voluntarily to transfer ownership to the T&D utility as described in section 7(B), or because a second customer will be served by a privately-owned line extension, and the owner must transfer the line as required by section 7(C).

Except where a line on private property will serve a single utility customer, as permitted by section 6(B)(1), a new line may not be energized prior to transfer. Thus, transfer to the utility must occur prior to energization for all lines described in sections 7(A): those located on a public way, interconnection points between a privately owned line and a utility-owned line, and lines in developments that will begin to serve

one customer. Section 7(A) is keyed to the circumstances described in section 6(A) and describes the timing of ownership transfer.

Section 7(B) describes transfer conditions when a person wishes, but is not required, to transfer ownership to a T&D utility. Under this section, a T&D utility must assume ownership of the line extension if the private owner has reimbursed the T&D utility for all taxes and various costs identified in section 7(E). If the line extension does not meet current standards, either the owner or the utility must upgrade the line prior to transfer of ownership. If the utility upgrades the line, the owner must pay for the upgrade as required by section 7(E).

The transfer requirement of Section 7(C) is directly related to Section 6(B)(4), which allows a non-utility person to own an energized line extension on private property if it serves only one customer. Section 7(C) requires transfer of ownership to the T&D utility when the line will serve more than one customer. It requires transfer of only the portions of the existing line (and any new extension that may be built off the original extension) that will serve more than one customer. Prior to transfer, the portions of the line that are transferred must be upgraded to current utility standards. If the utility upgrades the line, the new customer must pay for the upgrade as specified in section 7(F)(3). As drafted, Section 7(C) (and section 7(F)(3)) state that the new customers must pay for upgrades that are necessary to bring the line in compliance with the construction standards required by section 3. For the costs that must be incurred because standards have changed since the line extension was built, this policy seems fair because it is the addition of a new customer that triggers the requirement that the line extension be upgraded to more recent standards. Indeed, in some instances (where the new customer does not need an easement from the owner to gain access to the line), the owner will be required to transfer the line even if he or she does not consent to the addition of the new customer. We also note that the newer customers receive a substantial benefit by virtue of the fact that the line extension already exists and there is no need to build a whole new extension. In addition, it is easier to enforce payment of upgrade costs from new customers, who must pay prior to connection, than from old customers, who are already connected. On the other hand, if the line needs upgrading because the owner failed to perform the maintenance required by this Rule and the contract required by section 6(B)(3), it seems fair that the owner should pay for those costs.

We request comment on the fairness of the policy contained in the proposed Rule. One reason for assigning all of the costs to the new customers is that assigning or allocating costs to old and new customers might be difficult. We request the utilities in their comments to tell us whether the upgrade work (both to correct faulty maintenance and to bring a line to standards) is likely to performed at the same time and whether it is practical to directly assign or allocate the various costs. Specifically, are there some costs, such as tree trimming that an owner has neglected, that might readily be assigned to the transferring owner? Would it be feasible to assign directly any other costs? Would it make sense to allocate certain other costs according to the allocation method in section 9, and, if so, what are those costs?

Section 7(D) addresses the compensation, if any, that a utility should pay to a private owner who transfers ownership of a line to a utility. It incorporates existing utility policy, if any, but establishes a limit of an amount equivalent to the amount that the utility provides in the way of payments or other support (i.e., the amount that the line extension customer does not pay) if it does not require a person needing a line extension to pay the full cost in the first instance.[9] Because CMP and BHE require a person needing a line extension to pay the full cost of construction if the line is built by the utility, or to contribute a privately-built line extension, those utilities do not (and would not under the Rule) pay any compensation for a transferred line.[10] Some commenters in the Inquiry stated that a person who pays the cost of building a line extension should not be required to transfer a line extension that the person paid for without compensation by the utility. They have suggested that the current practice of CMP and BHE, whereby the private owner is not compensated and, in addition, must pay additional costs made necessary by the transfer, is inequitable to private owners.

CMP's and BHE's Terms and Conditions (and perhaps those of others) require persons needing a line extension to pay the full cost of the line extension, whether the utility or a private contractor builds it. If the utility builds the line, it will own it, even though the particular customer(s) who will obtain service from the line (rather than the general body of ratepayers) have paid for it. We see no financial or equitable difference between (1) requiring a person to pay the full cost for a line built by a utility that will own the line and (2) requiring a person who has paid a private contractor to build a line to turn over that line to the utility without compensation, whether immediately (because the line is on a public way or will serve more than one customer from the outset) or at some later date (because a privately-owned line that had served only one customer will begin to serve more than one).

We have approved the current CMP and BHE line extension terms and conditions at least in part because they follow the principle that the person who causes a cost to be incurred should be the person who pays that cost, to the greatest extent possible. The alternative is that all other utility ratepayers pay for the cost incurred by only a single person or a small group of persons. Many electric (and most telephone)

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[9] If a utility builds lines for customers, but does not have a policy under which it will compensate a customer for a line that the customer transfers to the utility, there would appear to be little incentive for customers to build their own lines. Requesting the utility to build the line will almost always be less expensive.

[10] Although BHE's terms and conditions (section 7(G)(11)) state that the Company "would offer to purchase" the line, we understand in practice that the payment to the original customer consists of the amounts collected as payments from new customers (less the CIAC tax) that BHE pays to the original owner pursuant to BHE's allocation provisions, which are essentially the same as those contained in section 9 of this proposed Rule. BHE might wish to make its term and condition clearer in this respect.

utility line extension Terms and Conditions do not follow this principle fully; instead, costs are shared between the individual customer that requires a line extension and the general body of ratepayers. We have recently encouraged utilities to reconsider these policies.[11]

As noted at the beginning of this NOR, the scope of this rulemaking is relatively narrow. We are addressing the matters required by newly-enacted 35-A M.R.S.A. § 314. We do not at this time propose to alter existing line extension policies with regard to the overall cost allocation between line extension customers and the general body of ratepayers for line extensions that are built by utilities. This rulemaking focuses more narrowly on issues that have arisen in connection with privately-constructed and privately-owned lines.[12]

Sections 7(E) and 7(F) describe the payments that a private owner must make to a T&D utility before the T&D utility may take ownership of the privately owned line extension. Section 7(E) applies to the transfer of new, unenergized lines built by private constructors that the owner must transfer to the utility prior to energization pursuant to sections 7(A): lines on public ways, interconnection points and lines in developments. It also applies to lines (energized or not) that an owner voluntarily transfers pursuant to section 7(B). Section 7(F) applies to transfers of ownership that are required by section 7(C) when a second customer will be served by a privately-owned line that is located on private property.

Sections 7(E) and (F) both follow the principle that persons who cause costs to occur should pay those costs. Thus, customers who voluntarily transfer or who are required to transfer ownership of a line must pay the utility all costs associated with the transfer.

Section 7(E)(1) states that the private owner of the line extension must reimburse an investor-owned T&D utility for federal and state corporate income taxes that the utility must pay for the contribution of facilities that occurs at the time of transfer.[13] It also describes the method by which the utility calculates the amount charged to the contributor, based on the tax paid by the utility, reduced by the present

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[11] In our report to the Legislature in December, 2000, we recommended that utilities re-examine their policies to consider full compensation, but we did not require that they do so.

[12] We note, however, that section 314 requires us to address the apportionment or reallocation of line extension costs for *all* line extensions, not just those that are privately-built, and we address that issue in section 9.

[13] Section 7(E)(1) does not apply to a consumer-owned utility (COU) because COUs do not pay income taxes.

value of the benefit that the utility receives because of accelerated tax depreciation.[14] We addressed the equity of requiring a transferring owner to pay this tax cost in the Inquiry. The payments required from transferring ("contributing") owners, because of the tax paid by the utility, is a significant amount, typically adding about 33%. Nevertheless, it is a cost that the utility incurs whenever a line extension is added to its system through a customer contribution. The central policy question is whether it should be borne by the general body of ratepayers or by the individual owner of the line that directly causes the tax event because of the transfer. Our general policy is that cost causers should pay, and Sections 7(E) and (F) therefore require transferring owners to pay the CIAC tax. The Terms and Conditions of the three IOU utilities require reimbursement for the CIAC tax both for line extensions that the utility builds (in which case the tax event occurs when the customer pays the utility for the line extension) and for subsequent transfers of facilities. We agree that both circumstances should be treated the same. Owners who are required to transfer ownership of a line extension because of Commission and utility policies might understandably think that because they are forced to transfer the extension it is the policy requiring transfer, not the customer's action, that has caused the cost to occur. The real cost cause of the tax event, however, is the fact that the line extension was built at all and, except under one limited circumstance, must be owned by the utility.

It is unimportant who built the line. If the utility built the line and the customer paid the utility for the construction, the payment is a contribution in aid of construction (CIAC) that is taxed as income to the utility. If the customer paid a private contractor to build the line and then "contributes" (even unwillingly) the line to the utility, the same taxable event occurs.

Line extensions are built to serve individual customers. They cause the costs of construction to occur. Similarly, customers' payment to the utility for the line extension that serves them, or, alternatively, their transfer to the utility of the line that serves them, is the direct cause of the utility's need to pay the tax. Other ratepayers did not need the line extension.

Section 7(E)(2) states that the owner of the private line shall reimburse the utility for its costs to connect the line extension to the distribution system. Section 7(E)(3) assigns to the private owner any costs incurred if the T&D utility must upgrade the line extension to bring it into compliance with the standards required by this Chapter. In addition, section 7(E)(4) provides that if a T&D utility has an approved Term and Condition for "upstream" costs (i.e., costs to upgrade existing distribution or

[14] The source of the language for this section is sections 3(C) and 4(C) of Chapter 65 (Water Main Extension and Service Line Rule).

substation facilities leading to the extension) that the new customer's demand will cause, those costs must also be paid prior to transfer.[15]

Section 7(F) is structured similarly to section 7(E), but addresses separately the payments that must be made when ownership is transferred because a second person will be served by an extension on private property that previously served only the owner of the line. This subsection is tied to the transfer requirement contained in section 7(C). The payment amounts and the method for calculating them are similar to the provisions in section 7(E). However, we have addressed the payments that must occur when a second customer is connected separately because we expect that the second customer(s) will pay some or all of the costs that are incurred as a result of the transfer. The payment that the customers must make to the utility, to compensate the utility for the tax it pays on the contribution, will be allocated among the old and new customer(s) as described in section 7(F)(1). As discussed above, we believe that the correct policy is that the person causing the line extension to be built and subsequent new customers who will benefit from that line extension should pay for the tax the utility incurs when there is a contribution of facilities.

Section 6(B)(1) contains a limited exception to the general rule of utility ownership of electric distribution facilities. For reasons that are primarily related to the existence of the tax on contributions, we are proposing to allow customers to own a line extension on private property *if* the line serves only that customer. This exception allows those customers to either avoid or at least defer the taxable event that would occur if ownership is transferred to the utility. For reasons explained elsewhere, the public safety may be jeopardized if a line that serves more than one customer continues to be privately owned. Accordingly, once the line will serve more than one customer, ownership must be transferred, and the transferring owner, for whom the line was built, can no longer defer reimbursing the utility for the tax it must pay as a result of the transfer.

Section 7(F)(3) states that new customers shall pay for upgrade costs. We address this proposed policy, which is reasonably debatable, in our discussion of Section 7(C) above.

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[15] This Rule defers to utilities' Terms and Conditions for the details of such provisions. The Commission is presently conducting an informal investigation of CMP's practices concerning the charging of upstream costs, and Commission staff expects that CMP may file a specific upstream cost Term and Condition. We note that logically such a provision should apply only when additional demand is presented because of a new line extension customer. At least one transfer of ownership circumstance described in section 7 does not result in additional demand. Under section 7(B), the owner of a line extension may voluntarily transfer ownership at any time. If the customer transfers an existing energized line, no additional demand is created because of the transfer.

Section 7(F)(4) requires that new customers must make the payments, required by section 9, that reallocate the costs of the line prior to energization for those customers. There is no parallel provision in section 7(E) because there is no need for payments to be made by new customers under the circumstances to which section 7(E) applies.

As under section 7(E), section 7(F) requires that payments be made before the T&D may assume ownership of the line and energizes any new facility that will serve the new customers, whether the facility is a service drop or a further line extension from the end of the original line extension or some point along it.

H. Section 8: Energizing an Electric Line Extension

Section 8 requires the T&D utility to ascertain that all steps required by this Chapter are carried out before it energizes a line extension. Section 8(A) states that, regardless of ownership of the line, the T&D utility must ascertain that the line is safe and reliable through the certification process required by this Chapter. Section 8(B) adds an additional safeguard by prohibiting energization if a dispute regarding the line extension is outstanding. Section 8(C) states that when an owner of a line transfers it to the T&D utility, any payments and transfer of ownership required by section 7 must have taken place before the utility may energize the line. Section 8(D) states that, when a private owner retains ownership of a line on private property that will serve a single customer, the owner must sign the contract for maintenance required by section 6(B)(3) before the utility may energize the line and must make all payments required by section 7(E). Finally, Chapter 8(E) states that, when a new customer will be served entirely or in part from a line that previously served only one customer, the old and new customers must have complied with all of the ownership transfer and payment requirements of section 7 prior to energizing any new facilities (whether service drops or a further line extension) that serves the new customers.

I. Section 9: Allocation and Reallocation of Line Extension Costs Among Customers

Section 9 establishes the method whereby multiple customers who share a line extension, or portions of a line extension, will share the construction and other costs of building the line extension whether a customer is served by the line initially or is added later.

Section 9(A) describes the line extensions to which the allocation and reimbursement provisions of section 9 apply. Although most of this Rule addresses issues related to privately built or owned line extensions, this section addresses allocation and reallocation for lines that are built by either a T&D utility or that are privately constructed. We address both categories in this section because the statute requiring this rulemaking, 35-A M.R.S.A. § 314(3), directs us to do so; we also can see no reason why different allocation policies should apply to utility-built and privately-built line extensions. By definition, however, this section applies only to utility-*owned* lines.

The proposed rule permits private ownership only if a line extension will serve a single customer. There is no need to allocate the costs of those lines. Those lines will become subject to the allocation method when a second customer is served from the line and the ownership of the line is transferred to the utility.

We also propose to apply the allocation method of this section to polyphase line extensions. Although section 314(3) requires the Commission to establish an allocation policy only for single-phase lines, we can see no reason to exclude polyphase line extensions from the allocation methodology we propose here.

We propose one major exception to our general inclusion of all line extensions. We see no need to apply the policy to developments. Like other persons who cause line extensions to be built, developers must pay for those extensions, either by paying the utility to build the extension or by contracting with a private contractor to do it. Proposed section 9 establishes an allocation formula for determining customer shares for the costs of the line extension, but it does much more. It requires the T&D utility to collect payments from new customers who attach to the line, and to distribute those payments among older customers according to the allocation formula. Absent a policy requiring these payments, it is unlikely that an individual residential or business customer could ever obtain compensation from a newer customer attaching to a line extension that the first customer financed. Unlike individual customers, however, a developer is uniquely capable of recovering all of its costs through the sale of lots or buildings that it builds on those lots. The cost of building a line extension is no different in principle from the cost of building a road or the cost of building houses or other buildings. The developer can adjust the sales price to cover those costs.

We can think of no sound policy reason why T&D utilities should be in the business of guaranteeing that developers collect the cost of line extensions from future customers who connect to the line extension financed by the developer when cost recovery for other developer costs is not guaranteed in this manner. We also can see no need to cast an additional administrative burden on utilities. Indeed, we expect the exclusion of developments from the purview of proposed section 9 will substantially mitigate any burden that this section might impose.

Currently, the methods for reallocating costs among multiple customers vary among utilities. In general, policies that are easier to administer are less precise in allocating costs among customers fairly, and policies that allocate costs more precisely are more complex.

We propose in this Rule to require all T&D utilities to use the allocation method that we adopted in 1986 in our Chapter 65 for water utilities, and that BHE adopted in 1990 in its Terms and Conditions. This method allocates costs according to the length of the line extension that serves each customer. A portion of a line extension that serves only one customer is assigned to that customer. Each length of line extension that serves more than one customer is divided by the number of customers it serves. The amount of the total length assigned to each customer is the sum of the

shares of each segment allocated to that customer. As in the Chapter 65 and BHE policies, section 9 proposes that line extensions have a "life" of 10 years; each time a new customer is added, the allocation is recalculated. A reasonable allocation method has both linear and temporal elements.

This method uses the simplifying assumption that costs of construction for each customer are proportional to length of line serving that customer. We recognize that some portions of a line may cost more than others because of the presence of ledge or above-normal needs for tree clearing or tree trimming, but we also believe it would not be practical for utilities to maintain detailed cost records for each line extension segment.

CMP's recent line extension revisions require each new customer to make a fixed payment that is then paid to the person who initially paid for the line extension with little regard to the total cost of the line extension or the amount (length) that the new (or first) customer uses.[16] In short, there is almost no attempt to allocate the costs on some basis related to the amount of cost that each customer has caused. CMP requires new customers on a line extension to make payments that will be used to reimburse the first customer for a period of five years.

MPS's reallocation method is the same that CMP used prior to CMP's recent revisions. For any line extension, all customers (whenever they are added during the first five years) share in the cost of the whole line equally, without regard to their distance from the beginning of the line or the length serving each customer. In addition, if a new line extension is built from the end of the first line extension (within the five-year period), the two line extensions will be combined for allocation purposes if that will reduce the cost per customer for all customers served by the two extensions. If combining the two line extensions would increase the costs for the customers served by the original line extension, the two extensions will not be combined. While this method may be somewhat simpler to administer than the Chapter 65-BHE method, it does not allocate according to the length used by each customer (which we believe is related to the cost to serve each customer), and we doubt it is any easier to explain to customers than the Chapter 65-BHE method.

Finally, some utilities build line extensions for customers at no charge, so there are no customer costs to reallocate when new customers are connected.

In approving CMP's current line extension policy, we decided that its allocation method described above was adequate. Since that decision, we and the Legislature have received customer complaints asserting that the method produces inequitable results, both with regard to the amounts paid to persons who paid for the line initially (too low) and the fact that CMP requires payments from new customers (to

[16] CMP's "development incentive payment charge" (DIP charge) is only slightly distance-sensitive. A new customer pays the greater of $500 or $1.00 per foot for portions of the line used in common.

reimburse old customers) for only five years. A line extension has many years of useful life, and the complaint (with which we agree) is that new customers should not receive a "free ride" on extensions that are only five years old.

It appears that BHE has not considered its method to be administratively burdensome. We conclude, that the possible administrative convenience, of CMP's current method does not compensate for its failure to allocate the cost of line extensions to individual customers in a manner that is related to the line extension needs of each of those customers, i.e., in a manner that is (or should be) acceptable to customers.

In our Inquiry, we invited interested persons to comment on the difficulty of administering a method of this type. Interested persons may comment further in response to this Notice of Rulemaking, but we urge commenters to be specific and factual in their remarks. Commenters should keep in mind that even the very smallest publicly-owned water utilities in Maine use this allocation method and that we have heard few complaints that it is either too difficult or costly for water utilities to administer or that they have applied the policy erroneously or unfairly. We discuss the details of the allocation method, which are set forth in section 9(D), further below.

Section 9(B) states that when two or more customers connect to a new line extension, the costs shall be allocated pursuant to the method set forth in section 9(D). Section 9(C) requires reallocation of the costs of the shared line extension, using the section 9(D) method, whenever a new customer is connected within 10 years after initial energization of the line. Section 9(C) requires the new customer to make a payment to the utility in an amount equal to the customer's "customer responsibility" that is calculated under section 9(D). The utility will distribute the amount paid by the new customer to each previous customer who has attached to the line extension. The amount paid to a previous customer equals that customer's responsibility under the prior allocation minus the customer's responsibility under the new allocation, both amounts being depreciated as provided in section 7(D)(2)(b). Using that method, the total of the amounts paid to previous customers will equal the amount paid by the new customer.

We have not specifically addressed the circumstance in which a customer location is removed from a line extension: one example is a building that has been torn down and not replaced. We do not believe that the process described in section 7(C) adequately addresses that circumstance, and we request comments on the best way to address it. We note first that no problem occurs until a new customer is added and a reallocation must occur under section 7(D) and payments must be made under section 7(C). We also note that the departed customer has already made a payment toward the line extension costs and that the payment has been distributed among other customers. It does not appear to make sense to pretend that the departed customer (or, more importantly, the fact that the departed customer shared in the costs) no longer exists for allocation purposes. Reallocation as if the former customer still exists appears to create less disruption to the overall cost allocation than does removing the customer; the latter

approach may even cause the percentage shares of the costs for existing customers to increase.

Assuming that it is better to reallocate the costs as if the departed customer were still served does cause one problem: the amount that must be paid by the new customer will exceed the total payments that the utility must pay to old customers, for the reason that one of those customers is no longer part of the line extension and will not be paid.[17] The specific question we ask commenters is: what is the best way to eliminate (or distribute) the difference between what the new customer must pay and the amounts that old customers should receive.

We note that the payment from the new customer is not a contribution in aid of construction. The cost of the whole line (or the line itself) has already been contributed. The payment is simply part of the cost reallocation process; the utility takes the entire amount of the payment from the new customer and distributes all of it to previous customers.[18]

Although the life of a line extension is 30 years, we believe that 10 years is a reasonable amount of time to require new customers that connect to a line extension to pay for some of its costs, to use those payments to reimburse earlier customers, and for T&D utilities to administer line extensions. We also find that limiting reimbursements to earlier customers for only a 5-year period does not give adequate consideration to the interests of persons who initially financed a line extension.

The allocation method is set forth in Section 9(D)(1). It establishes the payments that multiple customers connecting to a new line extension or a new customer connecting to an existing line extension must make for that customer's share of the cost of the full line extension. The amount is based on three factors – the customer's share of the length of the line extension, the total cost of the line extension, and a depreciation factor. Multiplication of the three factors results in a "customer responsibility" amount for each customer, stated in dollars.

We recognize that the first factor – each customer's percentage share of the extension – is somewhat complicated to calculate if many new customers are connected. However, we believe the effort is not unreasonable. We note that since the time that BHE implemented this allocation method, it has used a computer program that it developed to recalculate shares of line extension costs. Appendix B contains

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[17] Excluding the departed customer from the reallocation also results in a mismatch between the amount collected and the payouts to old customers.

[18] Section E-1(1) of BHE's Terms and Conditions states that subsequent customers must make a "contribution in aid of construction." This characterization may be misleading. Later provisions in the Terms and Conditions make clear that these are payments used to reallocate line extension costs among the customers using the extension.

examples of reallocations and the addition of a further line extension, thereby demonstrating the operation of sections 9(D) and 9(E).[19]

The second factor – the total cost of the line extension – consists of the depreciated costs of construction and the amount paid by the contributing customers toward the tax paid by the utility on the contribution (calculated under sections 7(E)(1) and 7(F)(1)). We discuss the details of the construction cost calculation in our discussion of section 9(D)(2).

Part of the construction cost is a depreciation component. We have left the details of that component to be determined by the T&D utilities and filed in a Term and Condition. We anticipate that the book life of line extensions is usually about 30 years and that the factor will reflect the utility's actual experience.

For the amount paid by customers toward the tax on contribution, the actual amount should be used, if there is an adequate record of that amount; if not, the utility may apply the percentage factor that it will probably develop (in order to implement sections 7(E)(1) and 7(F)(1)) to the construction cost as determined as part of this factor. It would be advisable for utilities to maintain good records not only of the amount that customers paid toward the tax under section 7(E)(1) or 7(F)(1), but of the underlying amount of the contribution, which is a different amount.[20] The contribution amount can be used to establish construction costs, the other component of this factor.

As noted above, section 9(D)(2) addresses the calculation of construction costs. Construction costs shall be determined by the actual original cost of construction (whether the line was built by the utility or a private contractor) if there is reasonable proof of those costs available. The rule specifies that the amount the utility used as the basis for establishing the amount of contribution for the purpose of the tax on the contribution shall be the same as the construction cost amount established under this provision unless there is good cause to deviate. Indeed, the contribution calculation may provide the best record of construction costs. If actual construction costs are unknown, the utility will use its own average per foot construction costs for the year in which the line extension was built, multiplied by the number of feet for the line extension.

As noted above, applying an allocation based on length per customer to total construction costs does not allow each customer's share to reflect the fact that construction costs may vary significantly for different portions of the line extension,.

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[19] The examples in Appendix B do not take into account the depreciation factor required by section 9(D)(1)(a).

[20] The utility pays a tax on the amount of the contribution. The amount charged under sections 7(E)(1) or 7(F)(1) to a person making a contribution is discounted by the present value of the tax depreciation received by the utility.

However, we believe it offers a reasonable approximation of the true cost each customer incurs, while avoiding undue complexity and administrative burden.

Finally, section 9(D)(2) contains a provision for determining single-phase-related costs when a polyphase line (constructed originally as a polyphase line or later rebuilt) serves a single-phase customer.

Section 9(D)(3) addresses the fact that under some utilities' Terms and Conditions, customers do not make a contribution in aid of construction for the full cost of a utility-built line extension. MPS, for example, provides the first 300 feet per customer for free, requires a support charge for lengths per customer between 300 and 2000 feet (1000 feet on private property), and requires a full contribution only for amounts in excess of 2000 feet (1000 feet on private property) per customer. In addition, at least one utility (CMP) provides a credit (stated in dollars) for low income customers. Section 9(D)(3) specifies that any allowance or low-income credit or other support shall be deducted from each customer's "customer responsibility" amount *after* allocation of the line extension costs pursuant to section 9(D)(1). These allowances or credits are for a fixed amount per customer, without regard to the distance that serves each customer or the cost per customer. If the allowances or credits were included prior to the allocation under section 9(D)(1) (e.g., as a deduction to construction costs), the total amount of the allowances or credits would themselves be allocated. Thus, for example, an MPS customer assigned a shorter distance would end up with less than 300 feet of allowance, and a customer assigned a longer distance would end up with more. MPS will, of course, need to convert 300 feet into a dollar amount that will be deducted from each customer's responsibility, which, under section 9(D)(1), is calculated as a dollar amount.

Section 9(D)(4) addresses the allocation of support or other monthly charges. A support charge requires individual line extension customers (rather than the general body of ratepayers) to pay for costs of supporting the utility's investment in the line extension. The line extension is not contributed, but is instead paid for by the utility and carried on its books as an investment. Under a support charge, individual line extension customers pay for such expenses as depreciation, maintenance and property taxes, as well as the return on the investment and income taxes on that return. MPS requires line extension customers to pay a support charge for footage between 300 and 2000 feet per customer (1000 feet on private property).

BHE allows a customer to pay a monthly charge instead of making a full contribution. It is similar to a support charge in that the utility invests in the line extension and there is no contribution. However, line extension customers will pay for the entire cost of the line extension over a 10-year period, i.e., for purposes of the line extension monthly charge, the line extension is fully depreciated (or amortized) in 10 years. From the customer's perspective, the BHE monthly charge resembles a loan.

Section 9(D)(3) simply requires these charges to be allocated by the first factor of the allocation formula in section 9(D)(1), i.e., by the number of feet serving each customer. The other factors of the allocation methodology are simply not relevant.

Section 9(E) addresses "additional" line extensions, i.e., those that begin at the end of the original extension and those extending from some point along the original extension (sometimes referred to as "laterals"). The purpose of this provision is to require a customer who connects to one of these extensions, but who benefits from a relatively recent "original" extension leading to the customer's own extension, to participate in paying for, rather than "free riding" on, the original extension. Absent this provision, in the worst case example, a person served by a very short additional extension would obtain a "free ride" on a relatively long, recently-built extension. If an additional line extension is built within 10 years following energization of the original line extension, the customers connecting to the new line extension will also be considered as connected to the original extension. They will make a payment that will be paid to the earlier customers on the original extension. The amount of the payment will be calculated pursuant to the allocation method of section 9(D)(1). For the purpose of that calculation, the customers served by the new extension will be considered to be "located" on the original line extension at the end of that extension (if the new extension is a "further" extension) or at the point where the "lateral" leaves the original extension. Once the 10-year life of the original line extension expires, section 9(E) will no longer require new customers on the additional extension to support the original extension.

While this provision adds another level of complexity to the allocation process, it is derived from a provision in BHE's Terms and Conditions. We are not aware of any difficulties that BHE has had in applying it.

J. Section 10: Waiver. Section 10 allows any person to petition the Commission for a waiver of any section of this Chapter that is not required by law. The legislation that directs the Commission to develop this Chapter states that such a waiver requirement is necessary; we always include waiver provisions in Commission Rules in any event. We recognize that many utilities currently have line extension policies that differ from those in this proposed Rule, and that changing some policies and procedures will take time and resources. However, we intend that all utilities comply with this Rule after a reasonable transition period. Thus, we will grant long-term waivers from this Rule only if there are compelling reasons for granting the waiver, and that there is no detriment to public safety, the goal of reliable service at just and reasonable rates, and the important public policy purposes of this Chapter.

VI. PROCEDURES FOR THIS RULEMAKING

This rulemaking will be conducted pursuant to the procedures of 5 M.R.S.A. §§ 8051-8058. A public hearing on this proposed Rule will be held on November 20, 2001 at 9:30 a.m. at the Public Utilities Commission. Written comments on the proposed Rule may be filed with the Administrative Director until December 3. However, the Commission strongly recommends that comments be filed by November 13, 2001 to

allow for follow-up inquiries during the hearing Supplemental comments may be filed after the hearing. Written comments should refer to the docket number of this proceeding, Docket No. 2001-701, and be sent to the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

Please notify the Public Utilities Commission if special accommodations are needed to make the hearing accessible to you by calling 1-287-1396 or TTY 1-800-437-1220. The Commission must receive requests for reasonable special accommodations 48 hours before the scheduled event.

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed Rule is expected to be minimal. The Commission invites all interested parties to comment on the fiscal impact and all other implications of the proposed Rule.

The Administrative Director shall send notice of the issuance of this Order and the attached Rule to:

1. All T&D utilities in the State;

2. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking; and

3. All persons listed on the service list or who filed comments in the Inquiry, *Inquiry into Terms and Conditions Governing Line Extensions Built by Persons Other than Transmission and Distribution Utilities,* Docket No. 2001-461.

The Administrative Director shall send copies of this Order and the attached Rule to:

1. The Secretary of State for publication in accordance with 5 M.R.S.A. § 6053(5); and

2. Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115 (20 copies).

Accordingly, it is

O r d e r e d

1. That the Administrative Director send copies of this Notice of Rulemaking and attached proposed Rule to all persons listed above and compile a service list of all such persons and any persons submitting written comments on the proposed Rule; and

2. That the Administrative Director send a copy of this Notice of Rulemaking and attached proposed Rule to the Secretary of State for publication in accordance with 5 M.R.S.A. § 8053.

Dated at Augusta, Maine, this 23rd day of October, 2001.

BY ORDER OF THE COMMISSION

_____

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

APPENDIX A – Text of P.L. 2001, Ch. 201

STATE OF MAINE

_____

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ONE

_____

S.P. 263 – L.D. 910

An Act Concerning Private Line Extensions

Be it enacted by the People of the State of Maine as follows:

Sec. 1 35-A MRSA §314 is enacted to read:

§314. Private line extensions

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Line" means an electric distribution line, including poles and other related structures.

2. Standards for private lines. The commission shall by rule establish standards for the construction of a line by a person other than a transmission and distribution utility. The rules:

A. Must establish standards for the construction of lines. The commission may establish different standards in different transmission and distribution utility territories. The standards must be the same as the standards that would apply if the transmission and distribution utility in whose territory the line is constructed built the line unless there are compelling public safety reasons for applying different standards. If these standards and any other reasonable conditions established by the commission are met, a transmission and distribution utility may not refuse to connect the line to the utility's system or to deliver energy over the line;

B. Must establish terms and conditions for transferring the ownership of a line to a transmission and distribution utility. The rules may establish a requirement that certain types of lines, lines under certain conditions, or lines in certain locations, such as lines located in the public way, must be transferred to the transmission and distribution utility; and

C. May require that a person that is not a transmission and distribution utility that constructs a line meet minimum qualifications established or approved by the commission.

3. Apportionment of costs of line extensions. The commission shall adopt rules establishing requirements for apportioning the costs of a single-phase overhead line extension among persons who take service through the line after the construction of the line. The commission may provide for exemptions from the apportionment methodology established by the commission for any transmission and distribution utility that petitions the commission for an exemption and establishes to the satisfaction of the commission that the transmission and distribution utility's apportionment methodology adequately serves the public interest and balances competing interests of customers.

4. Lines constructed in the public way. Nothing in this section or rules adopted under this section limits the application of section 2305 to any line constructed in a public way.

5. Submission of rules. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A and must be submitted to the Legislature for review no later than February 1, 2002.

Sec. 2. Public Utilities Commission examination of minimum qualifications of line constructors. The Public Utilities Commission shall examine whether minimum qualifications should be established for persons who construct private line extensions and if so, how the qualifications should be established and what mechanisms are most appropriate for ensuring the qualifications are met. The commission shall, with any rules submitted to the Legislature pursuant to the Maine Revised Statutes, Title 35-A, section 314, submit a report to the Joint Standing Committee on Utilities and Energy on the commission's findings and recommendations under this section.